

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Section 68.4 of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible	)	
Telephones	)	
	)	
Samsung Telecommunications America, L.P.	)	
Request for Waiver of Section 20.19(c)(1)(i) of	)	
the Commission's Rules	)	

To:   The Commission

**SAMSUNG TELECOMMUNICATIONS AMERICA, L.P.  
REQUEST FOR WAIVER OF SECTION 20.19(C)(1)(i)  
OF THE COMMISSION'S RULES**

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September 2, 2005

## SUMMARY

Samsung requests a waiver of the requirement of Section 20.19(c)(1)(i) that Samsung offer two GSM handsets meeting at least an M3 rating by September 16, 2005 until the earlier of either: (i) Samsung receives TCB certification for a second M3-rated 1900 MHz GSM handset (assuming the Commission agrees with Samsung's interpretation of the rule); (ii) Samsung receives certification and a purchase order for and is prepared to deliver to service provider customers its second M3-rated 1900 MHz GSM handset; or (iii) the Commission determines whether to adopt or otherwise permit a modified C63.19 standard that reflects the findings and recommendations of the ATIS HAC Incubator such that Samsung's handsets meeting an M3 rating at 1900 MHz and an M1 or M2 rating at 850 MHz are deemed compliant with the rules.

Samsung has worked diligently to meet its HAC Act obligations. Samsung already offers four CDMA handsets that are TCB-certified as M3-rated and is actively participating in efforts that have arisen with respect to GSM handsets. Despite difficulties that arose in the development of test procedures under the C63.19 standard and with respect to GSM technology, one of Samsung's 1900 MHz meets an M3 rating (for which a purchase order has been obtained), and certification of a second 1900 MHz handset is expected shortly. Samsung believes that for purposes of compliance with the rules, once it receives TCB certification for the second handset, which is anticipated in the near future but sometime after September 16, 2005, it will be offering two M3-rated handsets. To the extent that the Commission requires manufacturers to produce handsets for delivery to service providers for compliance purposes, Samsung requests a waiver until such time as certification is obtained, a purchase order received and Samsung has had approximately two months to deliver the second M3-rated 1900 MHz handset to customers.

Alternatively, Samsung already offers two GSM handsets that meet an M3 or M4 rating at 1900 MHz and an M2 or M1 rating at 850 MHz. For reasons that ATIS and Cingular Wireless have explained to the Commission, as the current C63.19 standard does not differentiate between the upper and lower PCS/cellular bands, for many dual band handsets the M-rating system under the current standard may inappropriately classify these two Samsung GSM handsets as noncompliant. Thus, Samsung requests a waiver due to the substantial compliance with HAC Act objectives achieved through these two dual-band models until such time as the Commission determines whether to modify the standard to reflect these realities.

Waiver is consistent with the public convenience, interest and necessity. HAC-compliant technology did not emerge as the Commission anticipated, and the unforeseen developments concerning GSM technology warrant that the Commission afford manufacturers and service providers a degree of flexibility. Moreover, Samsung has undertaken good faith efforts to comply. Samsung's offering of two dual-band GSM handsets that meet at M3 rating at the 1900 MHz band and an M1 or M2 rating at 850 MHz further underscores that waiver is consistent with the Commission's HAC Act objectives in light of the need to revise the standard to reflect band differences, as ATIS has recommended. Finally, Samsung seeks limited relief, as it has limited its request to one air interface protocol, its request is premised on its good faith efforts, it does not ask the Commission to abandon the C63.19 standard, and has incorporated a built-in time limitation.

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REQUEST FOR WAIVER OF SECTION 20.19(C)(1)(i)  
OF THE COMMISSION'S RULES**

By this filing, Samsung Telecommunications America, L.P. ("Samsung"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,<sup>1</sup> requests a waiver of the requirement of Section 20.19(c)(1)(i) that Samsung offer two GSM handsets meeting at least an M3 rating by September 16, 2005.<sup>2</sup> Samsung requests a waiver of the rule until the earlier of either: (i) Samsung receives TCB certification for a second M3-rated 1900 MHz GSM handset (assuming the Commission agrees with Samsung's interpretation of the rule); (ii) Samsung receives certification and a purchase order for and is prepared to deliver to service provider customers its second M3-rated 1900 MHz GSM handset; or (iii) the Commission determines whether to adopt or otherwise permit a modified C63.19 standard that reflects the findings and recommendations of the Alliance for Telecommunications Industry Solutions ("ATIS") AISP.4 Incubator ("HAC

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<sup>1</sup> 47 C.F.R. §§ 1.3, 1.925.

<sup>2</sup> *Id.* § 20.19(c)(1)(i).

Incubator”) such that Samsung’s handsets meeting an M3 rating at 1900 MHz and an M1 or M2 rating at 850 MHz are deemed compliant with the rules. For the reasons discussed below, waiver is consistent with the public interest, convenience and necessity.

## **DISCUSSION**

### **I. SAMSUNG HAS WORKED DILIGENTLY TO MEET THE COMMISSION’S HAC ACT REQUIREMENTS**

Samsung has undertaken numerous good faith efforts in addressing its Hearing Aid Compatibility Act (“HAC Act”) obligations and is committed to compliance with the Commission’s rules. Even before the Commission imposed HAC Act obligations on wireless handset manufacturers, Samsung endeavored to design its handset products as consistently as possible with the wireline HAC standard.<sup>3</sup> Samsung has participated in industry’s consumer education efforts to make publicly available information on handsets that appeared to facilitate usability with certain hearing aids.<sup>4</sup> To support industry’s efforts to comply with the Commission’s wireless HAC rules, Samsung participates on a number of industry-based HAC working committees, cooperating with others in the industry to implement technical guidelines and standards for implementing the HAC rules in a timely fashion. Samsung also participates in HAC Incubator working group meetings and conference calls to ensure that Samsung is keeping abreast of changes to the IEEE C63.19 standard.

Samsung already offers four CDMA handsets that are Telecommunications Certification Body (“TCB”)-certified as M3-rated, and anticipates that as many as five CDMA handsets will be certified as compliant by the September 16, 2005 deadline.<sup>5</sup> With respect to issues that have

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<sup>3</sup> See Samsung *Ex Parte* Presentation in WT Docket No. 01-309, filed March 3, 2003, at 1.

<sup>4</sup> See [www.accesswireless.org](http://www.accesswireless.org).

<sup>5</sup> Consistent with its Section 255 obligations, Samsung has also implemented an employee training program in which the Samsung customer service representatives are provided training and training materials regarding (continued on next page)

arisen regarding GSM handsets, Samsung has taken a leadership role in HAC Incubator Working Group 9 (“WG-9”). Notably, Samsung participated in WG-9’s handset testing efforts at the recent annual SHHH convention. Internally, Samsung has tested a number of Samsung’s existing GSM models, the results of which have been used to determine which handsets will best facilitate compliance with the Commission’s HAC mandate. In addition to Samsung’s own efforts to design HAC Act-compliant GSM handsets, Samsung has solicited and is reviewing third-party vendor proposals to address HAC compliance. As discussed herein, in part as a result of these efforts Samsung now offers a number of GSM handsets that will facilitate use by hearing aid wearers, if not outright compliance with the HAC Act’s requirements.

## **II. WHILE INDUSTRY HAS HAD LIMITED TIME TO TEST AND PRODUCE COMPLIANT HANDSETS, SAMSUNG OFFERS AT LEAST ONE M3-RATED 1900 MHZ GSM HANDSET MODEL AND EXPECTS TO SHORTLY OFFER ANOTHER**

### **A. Samsung was Unable to Confirm the M-Rating of Its Handsets with TCBs Until Late Spring of 2005.**

Developing the testing protocols and determining the HAC Act compliance of GSM handsets has been well documented as a challenging process for industry.<sup>6</sup> Cingular and T-Mobile have both filed waiver petitions explaining these difficulties, and Samsung supports their

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accessibility issues generally, including HAC. Customer service representatives are updated as new requirements and information becomes available. Additionally, Samsung has a Designated Service Agent to answer questions on accessibility and HAC related issues for wireless phones. Samsung has a link on its Wireless Phones website dedicated to accessibility, which provides the latest information on the Samsung models that support HAC and will be updated as HAC Act-compliant handsets become available. See <[http://www.samsungtelecom.com/contact\\_us/accessibility.asp#hearingaid](http://www.samsungtelecom.com/contact_us/accessibility.asp#hearingaid)>. Samsung participated in the ATIS presentation panel and has participated with ATIS at this year’s Self Help for the Hard of Hearing (“SHHH”) convention as part of its efforts to educate consumers on HAC issues.

<sup>6</sup> See ATIS Report in WT Docket No. 01-309, filed May 17, 2005, at 11-13; ATIS Report in WT Docket No. 01-309, filed Nov. 17, 2005, at 12-17.

requests.<sup>7</sup> The C63.19 standard was not final when incorporated into the Commission's rules in 2003 and has since been modified.<sup>8</sup> While the standard was being revised, industry worked to develop procedures to test to the standard. The Commission recognized in the *HAC Report and Order* that it can take manufacturers at least two years to produce and label digital wireless phones which comply with the M3 level.<sup>9</sup> However, because of the need to finalize the standard concurrently with the establishment of reliable test procedures that produced repeatable results, industry did not have a full two years to produce and bring compliant products to market.

Because of the limited time available between the *HAC Report and Order* and September 16, 2005, industry has worked through various technical issues via the ATIS HAC Incubator process. There was no reliable method of confirming the M-rating of manufacturers' handset products, however, until the test protocol was close to final and TCBs, in turn, could be trained as to the standard. For compliance purposes, manufacturers and carriers could not reasonably design new products in accordance with the standard with certainty. In the period during which the test protocols began to be implemented in late 2004, ANSI C63 worked to improve the standard and the testing protocol throughout 2004 and 2005. Recently, in April 2005 the Commission clarified for TCBs that testing to the 2005 version of C63.19 was permissible.<sup>10</sup>

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<sup>7</sup> See Cingular Wireless, LLC, Petition for Waiver, WT Docket No. 01-309, filed Aug. 5, 2005 ("Cingular Petition"); T-Mobile USA, Inc. Petition for Waiver, WT Docket No. 01-309, filed Aug. 26, 2005 ("T-Mobile Petition").

<sup>8</sup> See Cingular Petition at 9; *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Report and Order*, WT Docket No. 01-309, 18 FCC Rcd 16753, 16779 ¶ 63, *Erratum*, 18 FCC Rcd 18047 (2003) ("*HAC Report and Order*"); *In the Matter of Section 68.4(a) of the Commission's Rules Concerning Hearing Aid Compatible Telephones*, WT Docket No. 01-309, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 05-122, 20 FCC Rcd. 11221, ¶ 16 (2005) ("*HAC Recon Order*").

<sup>9</sup> See *HAC Report and Order*, 18 FCC Rcd. at 16781-82 ¶ 71.

<sup>10</sup> See *Public Notice, OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, DA 05-1134 (rel. Apr. 25, 2005). Industry has thus had only limited time to test products to the new standard.

Samsung was finally able to begin to test handsets to the standard in the spring of 2005 and has continued these efforts since.

As noted, Samsung has determined that at least four and possibly as many as five CDMA handsets will meet the M3 rating.<sup>11</sup> Moreover, one of Samsung's single-band 1900 MHz GSM handsets meets an M3 rating and a second is expected shortly.<sup>12</sup> As Cingular recently explained in its pending waiver request, however, the HAC Incubator's efforts "revealed unforeseen, significant technological issues with respect to GSM handsets operating in the 850 MHz cellular bands."<sup>13</sup> Because GSM phones operate at a higher power level in the 850 MHz band compared to handsets that operate in the 1900 MHz band, it has proven difficult for GSM manufacturers to design handsets to direct the RF power away from the hearing aid. These facts have made compliance more difficult for GSM manufacturers and carriers alike, particularly at 850 MHz.<sup>14</sup>

**B. Samsung Offers One M3-Rated GSM Handset at 1900 MHz and Expects to Offer a Second One Shortly**

Section 20.19(c)(1)(i) of the rules requires, in relevant part, that Samsung "[o]ffer to service providers at least two handset models for each air interface offered that [meet an M3 rating or higher] by September 16, 2005."<sup>15</sup> The Commission explained that this rule requires that manufacturers "make commercially available two handsets per air interface."<sup>16</sup> While the

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<sup>11</sup> These handsets are: the A840, N330, A650 and A850 models. Over one million of the A840 model alone will be shipped to carrier customers.

<sup>12</sup> As noted herein, Samsung offers two additional dual-band handsets that meet an M3 or higher rating at 1900 MHz and an M1 or M2 rating at 850 MHz. Standard C63.19, however, requires that these handsets be given the lower of the two ratings.

<sup>13</sup> See Cingular Petition at 10; see also Comments of SHHH in WT Docket No. 01-309, filed Aug. 18, 2005, at 1 ("significant technical issues with respect to GSM 850 MHz came to light way too late in the Incubator process").

<sup>14</sup> See Cingular Petition; T-Mobile Petition (discussing difficulties Motorola handsets encountered); see also Motorola *Ex Parte* Presentation in WT Docket No. 01-309, filed Aug. 31, 2005; T-Mobile *Ex Parte* Presentation in WT Docket No. 01-309, filed Aug. 19, 2005 ("problems associated with attaining HAC compliance for GSM handsets now apparently extend beyond the 850 MHz band to 1900 MHz band handsets").

<sup>15</sup> 47 C.F.R. § 20.19(c)(1)(i).

<sup>16</sup> *HAC Report and Order*, 18 FCC Rcd. at 16781-82 ¶ 71.



Commission does not otherwise clarify what constitutes a *bona fide* “offering” that is “commercially available” to a service provider for purposes of the rules, Samsung believes that the most reasonable interpretation is that a manufacturer must offer to service providers a handset model TCB-certified as compliant that it is ready to manufacture if and when the service provider signs a purchase order.<sup>17</sup> This interpretation best reflects the traditional commercial relationships between manufacturers and their carrier customers.

In this regard, Samsung does not believe that the Commission intended that a manufacturer be required to have already produced handsets for delivery to its carrier customer(s) in order to comply with the “offering” requirement. Manufacturers do not mass produce tens- or hundreds-of-thousands of handsets for a carrier customer until such time as they have received a purchase order for a given handset. Rather, a handset is marketed to carriers and tested for compliance with Commission rules and the carrier’s technical specifications on a prototype basis, with mass production and delivery to the customer occurring after the offer is accepted via receipt of a purchase order. Thus, a manufacturer typically “offers” a handset to carriers as a prototype model in response to a carrier’s product request. To interpret otherwise would effectively require a manufacturer to expend millions of dollars and significant time and resources to manufacture a product for which there is no buyer.<sup>18</sup>

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<sup>17</sup> The Commission’s rules require “certif[ication of] compliance with the compatibility requirements in [Section 20.19] through the equipment authorization process set forth in Part 2 of [the] rules.” *Id.* at 16783 ¶ 75, codified at 47 C.F.R. §§ 2.1033(d) and 20.19(b)(3). TCB testing and certification is a fundamental component of the Part 2 certification process. *See* 47 C.F.R. §§ 2.960-2.962. That the equipment certification process may occur independent and irrespective of the receipt of purchase orders and the delivery of product to carrier customers is consistent with Samsung’s interpretation of the rules.

<sup>18</sup> This is not inconsistent with the requirement as applied to service providers. As discussed herein, the time necessary to develop the C63.19 test procedures simply left significantly less time for manufacturers and service providers alike to complete the product development and product acquisition/distribution processes to meet the September 16, 2005 deadline.

In this regard, Samsung has received a purchase order from T-Mobile for its X495H model, which has been TCB-tested and assigned an M3 rating. Samsung also expects to “offer” the T309H, for which Samsung has conducted internal testing preliminarily indicating that it meets an M3 rating. On August 26, 2005, Samsung submitted a request for TCB testing and certification for the T309H, and approval is anticipated shortly.<sup>19</sup> To date, however, no carriers have indicated an intent to submit a purchase order for this handset. Nonetheless, once it receives TCB certification Samsung believes it will be offering two M3-rated handsets in compliance with the rule. Samsung is about to begin producing the X495H model, having been TCB-tested and assigned an M3 rating on September 2, 2005.<sup>20</sup> Samsung will begin this process with the T309H once it is TCB-certified and a purchase order is obtained. Once a carrier expresses an interest in the handset and submits a purchase order for the T309H and future TCB-certified handsets, Samsung estimates that product can be produced and delivered in the next calendar quarter thereafter.

Accordingly, assuming the Commission agrees with Samsung’s interpretation of the rule, Samsung requests a waiver until such time as it obtains certification for the T309H, which Samsung hopes to occur within the next month or so. Alternatively, to the extent the Commission interprets the rule as requiring that Samsung produce handsets for delivery to service providers, Samsung requests a waiver until such time as certification is obtained for the T309H, a purchase order is received, and Samsung has had approximately two months to

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<sup>19</sup> In the event that the T309H does not meet an M3 rating upon TCB testing, Samsung will notify the Commission and amend the instant waiver request accordingly.

<sup>20</sup> As T-Mobile noted in its waiver petition, Samsung had obtained TCB certification of the X495H on August 26, 2005. To accommodate a minor design improvement to the handset, out of an abundance of caution Samsung resubmitted the X495H for certification and the TCB again tested and assigned the X495H an M3 rating on September 2, 2005. Samsung anticipates completion of the certification process under Section 2.1033(d) of the rules in due course. As a result of the TCB testing, additional ministerial steps may need to be undertaken with respect to the product manual and labeling which may add a brief delay in the delivery of the product.

produce and deliver the handsets to service providers. Delivery of the X495H to T-Mobile is anticipated in approximately six weeks from obtaining Commission type acceptance, and delivery of the second compliant handset, the T309H, will occur after a purchase order is received. It would be commercially unreasonable and unduly burdensome for the Commission to penalize Samsung for not producing such handsets prior to certification and the receipt of signed purchase orders.

**C. Samsung Offers Two Dual-Band GSM Handsets that Meet the Objectives of the HAC Act and the Commission's Rule**

Samsung already offers two GSM handsets that meet an M3 or M4 rating at 1900 MHz and an M2 or M1 rating at 850 MHz,<sup>21</sup> and tentatively plans to introduce an additional model in October of this year.<sup>22</sup> As ATIS recently explained to the Commission and as Cingular discussed in its waiver request, recent testing – including testing at the SHHH convention in which Samsung participated – highlights the improvements in hearing aid immunity for newer, digital hearing aid devices and calls into question the relevance and usefulness of the M3 requirement at 850 MHz under the existing standard.<sup>23</sup> ATIS recently informed the Commission that “there is no discernable difference in user experience between M1/M2-rated 850 MHz wireless devices and M3-rated 1900 MHz wireless devices.”<sup>24</sup> Thus, insofar as the C63.19 standard does not differentiate between the upper and lower PCS/cellular bands, for many GSM 850 MHz handsets the M-rating system under the current standard may inappropriately classify Samsung's GSM

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<sup>21</sup> These handsets are: the P207, which meets an M4 rating at 1900 MHz and an M2 rating at 850 MHz; and the D357, which meets an M3 rating at 1900 MHz and an M1 rating at 850 MHz.

<sup>22</sup> Samsung previously offered another handset, the E217, that met an M3 rating at 1900 MHz and an M1 rating at 850 MHz, but received no purchase orders for this model and it has since been discontinued.

<sup>23</sup> See Cingular Petition at 11.

<sup>24</sup> Letter from Thomas Goode, Attorney, ATIS, to Marlene H. Dortch, Secretary, FCC, at 1 (filed August 1, 2005).

handsets as noncompliant. Indeed, at the SHHH convention, a number of hearing aid users were readily able to use the Samsung handset being tested at 850 MHz.

Thus, it appears that at least two of Samsung's GSM handsets substantially meet the HAC Act's requirements that they "provide internal means for effective use with hearing aids," even if they do not strictly comply with the rule.<sup>25</sup> On this basis, as an alternative to a waiver for the 1900 MHz handsets described above, Samsung requests a waiver due to the substantial compliance achieved through the P207 and D357 dual-band handset models until such time as the Commission determines whether to modify the standard to reflect these realities.

### **III. WAIVER OF THE COMMISSION'S RULES IS CONSISTENT WITH THE PUBLIC INTEREST**

Given the very real and significant GSM technology challenges facing industry generally, and the time necessary for Samsung to test and bring products to market, it would be unduly burdensome and contrary to the public interest to strictly enforce Section 20.19(c)(1)(i).<sup>26</sup> The possibility that Samsung already offers two dual-band GSM handsets (and plans to offer two more) that substantively meet HAC Act requirements further militates in favor of waiver as well.

#### **A. HAC-Compliant Technology Did Not Emerge as the Commission Anticipated.**

While the Commission acknowledged that design changes may be necessary, it posited "that most phones will not require changes to the core design" and that there may already "be "digital wireless handsets currently on the market that meet the U3 level," including GSM

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<sup>25</sup> See 47 U.S.C. § 610(b)(1); see also Senate Report at 2, 1988 USCCAN at 1346 ("other means of 'compatibility' may be developed in the future"); House Report at 12-13 (legislation "is flexible and allows for other methods of compatibility").

<sup>26</sup> See 47 C.F.R. §§ 1.3 (waiver appropriate "for good cause shown") and 1.925(b)(3)(ii) (waiver appropriate where unique or unusual factual circumstances render application of the rule "inequitable, unduly burdensome or contrary to the public interest"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate where "particular facts would make strict compliance inconsistent with the public interest").

handsets.<sup>27</sup> Achieving a M3 rating for GSM handsets has proven difficult, however, for both the 850 MHz cellular and 1900 MHz broadband PCS bands. Moreover, in affording a two-year period for manufacturers and service providers to meet the M3 rating, the Commission apparently anticipated that manufacturers' product development steps could occur in a traditional sequence: design and development of a prototype handset designed in accordance with an established standard; followed by TCB certification; followed by receipt of purchase orders from carrier customers; and finally, concluding with manufacture and delivery to Samsung's carrier customer(s).

For a number of reasons, however, there was no agreed-upon testing protocol against which to design and test such handsets until late 2004/early 2005 – well into the two-year period. Moreover, the significance of the problems encountered in meeting a M3 rating under the current standard for GSM handsets was unanticipated (given the widespread use of GSM handsets usable for hearing aid wearers in Europe) and not adequately understood until spring 2005, at which point there was insufficient time to modify product already in the marketplace or to create new product that meets a M3 rating under the existing standard. These unforeseen developments warrant that the Commission afford a degree of flexibility to manufacturers and carriers as they strive to provide usable GSM handsets for hearing aid users.<sup>28</sup>

#### **B. Samsung Has Undertaken Good Faith Efforts to Comply**

As demonstrated above, Samsung has undertaken good faith efforts to meet the September 16, 2005 deadline. Samsung has met the requirement for CDMA handsets, with room to spare. Samsung continues to work through WG-9 to help industry address GSM issues

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<sup>27</sup> *HAC Report and Order*, 18 FCC Rcd. at 16781 ¶ 71, 16783 ¶ 75.

<sup>28</sup> See *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 423, 445 (D.C. Cir. 1991); *P&R Temmer v. FCC*, 743 F.2d 918, 929 (D.C. Cir. 1984); *Telocator Network of America v. FCC*, 692 F.2d 525, 550 n.191 (D.C. Cir. 1982).

generally, including 850 MHz issues. As the record plainly indicates, however, the difficulties associated with GSM handsets under the current version of the C63.19 standard are industry-wide. Samsung nevertheless has received a purchase order from a service provider for one compliant M3-rated handset, anticipates certification and a purchase order for a second shortly, and already offers two dual-band handsets that substantially comply with the Commission's HAC Act objectives. Under the circumstances Samsung has taken all good faith steps reasonably possible to comply. Waiver is warranted for this reason as well.<sup>29</sup>

**C. Samsung's Offering of Two Handsets that Meet an M3 Rating at the 1900 MHz Band and M1 or M2 at 850 MHz Further Underscores that Waiver Grant Is Consistent with the Commission's HAC Act Objectives**

As noted, Samsung offers at least two handsets that meet an M3 rating at 1900 MHz and M1 or M2 at 850 MHz. As ATIS recently has explained, there appears to be little difference in users' experience between a M3 rated handset at 1900 MHz and an M1 or M2 rated handset at 850 MHz.<sup>30</sup> Samsung's experience in real-world testing its product at the SHHH convention appears to verify this conclusion. Thus, it now appears likely that Samsung already offers at least two and as many as four GSM handsets that provide effective use with newer hearing aids in both bands.<sup>31</sup>

ATIS has recommended that the C63.19 standard be modified to reflect differences between the 850 and 1900 MHz bands such that a handset currently meeting an M1 or M2 rating

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<sup>29</sup> See *Telephone Number Portability, NOW Licenses, LLC*, 19 FCC Rcd. 8851 (2004) (citing to good faith efforts as basis for waiver); *Truth-in-Billing and Billing Format*, 15 FCC Rcd. 35, ¶ 4 (1999) (same).

<sup>30</sup> See ATIS August 1<sup>st</sup> *Ex Parte*.

<sup>31</sup> Samsung notes that HAC Act obligations apply with respect to hearing aid devices "designed to be compatible with telephones which meet established technical standards for hearing aid compatibility" such they have "sufficient immunity to be intended for use with wireless devices and services." See 47 U.S.C. § 610(b)(1)(B); *HAC Report and Order*, 18 FCC Rcd. at 16778 ¶ 60.

at 850 MHz would instead be given an M3 rating in that band.<sup>32</sup> Should the standard be modified and the Commission's rules amended accordingly, it appears that Samsung will already be offering GSM handsets that meet the revised standard. For this reason, grant of Samsung's waiver request would be consistent with the HAC Act and the objectives of the Commission's wireless HAC rules.

#### **D. Samsung Seeks Limited Relief**

Samsung requests only limited relief from the Commission's rules. First, Samsung's request is limited to one handset for one air interface protocol (GSM), and is premised on Samsung's substantial efforts undertaken to work toward the standard. Moreover, Samsung does *not* in any way advocate (implicitly or otherwise) that the Commission abandon the C63.19 standard. While C63.19 can be improved to address band differences, such a change is the type of change the Commission in the *HAC Report and Order* anticipated might be necessary.<sup>33</sup> Samsung is actively participating in industry's efforts to resolve this issue.

Finally, Samsung's waiver request has a built-in time limitation. As noted, depending on whether the Commission agrees with Samsung's interpretation of the rule, Samsung's 1900 MHz handset offerings would likely render Samsung in compliance in approximately one month or within two months after receipt of a purchase order for the T309H handset model. With respect to grant of a waiver premised on Samsung's dual-band handset offerings, Samsung notes that ATIS has preliminarily indicated that the necessary revisions at the standards body level could potentially be completed by end of year 2005.<sup>34</sup>

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<sup>32</sup> See ATIS August 1<sup>st</sup> *Ex Parte*.

<sup>33</sup> See *HAC Report and Order*, 18 FCC Rcd. at 16779 ¶ 63.

<sup>34</sup> See ATIS, *Ex Parte* Presentation in WT Docket No. 01-309, filed Aug. 26, 2005, at Slides 3, 13-14.

#### **IV. CONCLUSION**

For the foregoing reasons, Samsung respectfully requests that the Commission waive Section 20.19(c)(1)(i) of the rules until such time until the earlier of either: (i) Samsung receives TCB certification for a second M3-rated 1900 MHz GSM handset (assuming the Commission agrees with Samsung's interpretation of the rule); (ii) Samsung receives certification and a purchase order for and is prepared to deliver to service provider customers its second M3-rated 1900 MHz GSM handset; or (iii) the Commission determines whether to adopt or otherwise permit a modified C63.19 standard such that Samsung's handsets meeting an M3 rating at 1900 MHz and M1 or M2 rating at 850 MHz are deemed compliant with the rules.

Respectfully submitted,

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September 2, 2005